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DJ 5-52-20275
CMN 2017102332

U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Northern Region
P.O. Box 55
Washington, D.C. 20044

March 16, 2020

Via ECF

The Hon. Peggy Kuo
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Moshe Lax, et al.*
18-cv-04061-ILG-PK (E.D.N.Y.)

Dear Judge Kuo:

After months of unsuccessfully attempting to obtain a subpoena response from Martin Ehrenfeld a/k/a Mordechai Ehrenfeld ("Ehrenfeld"), the United States seeks an order compelling Ehrenfeld to respond to the subpoena pursuant to Fed. R. Civ. P. 45(a)(1)(A)(iii). "The court for the district where compliance is required may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it." Fed. R. Civ. P. 45(g). This motion complies with the Court's Individual Practice Rules and Local Civil Rule 37.3(a), as the undersigned counsel has discussed the discovery dispute with Ehrenfeld by telephone before seeking judicial intervention. A copy of the subpoena at issue is attached.

The United States will send this motion to Ehrenfeld via FedEx at his last known address, and by multiple email addresses (some of which were provided by defendant Moshe Lax). Pursuant to the Court's Individual Practice Rule V(a)(1)(f), Ehrenfeld is to file his response letter within five business days after this letter motion is filed.

The United States served a Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action on Ehrenfeld on November 14, 2019, attached as Exhibit 1. Ehrenfeld was a business advisor and colleague of defendant Moshe Lax, and was involved in transactions at issue in this litigation, including but not limited to distribution of Estate assets. As such, he is an important third-party witness. Among other things, the subpoena asked Ehrenfeld to produce business records related to some of the defendants in this action.

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Department of Justice Trial Attorney Pingping Zhang (“Ms. Zhang”) was assigned to follow up on the subpoena and attempt to obtain Ehrenfeld’s compliance.¹ On December 3, 2019, Ms. Zhang sent a letter to Ehrenfeld requesting him to produce the subpoenaed documents by December 13, 2019. Several days later on December 17, 2019, Ehrenfeld called Ms. Zhang and told her that he was willing to cooperate with the government. Ehrenfeld indicated that all the information requested by the subpoena was in his Gmail email account. He requested an extension until after the 2019 holiday season.

Ms. Zhang followed up again with Ehrenfeld, this time on January 3, 2020 and by email, proposing certain protocols for Ehrenfeld to produce the electronic information stored in his Gmail account. Ms. Zhang and Ehrenfeld spoke by telephone on January 7, 2020 and Ehrenfeld mentioned the possible existence of a *Kovell* agreement. He promised to follow up on this with Ms. Zhang by January 9 or 10, 2020.

Ms. Zhang never received the follow up call from Ehrenfeld during the week of January 7, 2020 and reached out to him by telephone on both January 14 and 16, 2020. Given that Ehrenfeld’s voice mail box was full, Ms. Zhang sent him a text message on January 14, 2020 requesting a call back. As of the time of her departure from the Department of Justice, Ms. Zhang had not heard back from Ehrenfeld.

On February 27, 2020, undersigned counsel spoke to Ehrenfeld over the telephone regarding compliance with the subpoena. Ehrenfeld explained that he recently underwent surgery and was recovering in Florida and mentioned a privilege issue due to a *Kovell* agreement. When asked by the undersigned whether a *Kovell* agreement in fact exists, Ehrenfeld was unable to provide a definite answer. The undersigned emailed Ehrenfeld on February 28, 2020 asking him to confirm whether a *Kovell* agreement exists and to provide information as to what it pertains to by March 2, 2020. As of the date of this filing, undersigned has not heard from Ehrenfeld.

As an affiliate of defendant Moshe Lax, Ehrenfeld is the best source of the requested documents, as the United States would have great difficulty in retrieving this information from any other source.

Ehrenfeld has taken no steps that the United States is aware of to obtain the relevant documents or to notify the United States of his inability to do so. The United States has spent months attempting, in good faith, to obtain responses from Ehrenfeld. The government has done what it can in the absence of Ehrenfeld’s cooperation. Ehrenfeld’s third party status does not relieve him of his obligations to respond under the subpoena.

¹ Trial Attorney Zhang is no longer employed at the U.S. Department of Justice as of January 24, 2020. A declaration of Zhang, detailing her efforts as stated in this letter motion, is attached.

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The United States respectfully requests an order compelling Martin Ehrenfeld a/k/a Mordechai Ehrenfeld to provide complete responses to the United States' subpoena requests within thirty days.

Respectfully submitted,

/s/ Ali Gadelhak

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Enclosure(s):
As stated.